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No. 683

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

THE UNITED STATES OF AMERICA

v.

ADA L. BURROUGHS AND JAMES CANNON, JR.

ON CERTIFICATE FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR ADA L. BURROUGHS AND JAMES CANNON, JR.

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JURISDICTION

The case comes here upon questions certified by the Court of Appeals of the District of Columbia, under Sec. 239 of the Judicial Code, with respect to matters of law arising upon an appeal taken by the United States from a judgment of the Supreme Court of the District of Columbia, sustaining a demurrer to an in-

dictment returned in that court against appellees under Sec. 244 of the Federal Corrupt Practices Act of February 28, 1925, c. 368, Title III, Secs. 301-318, 43 Stat. 1053, 1070-1074 (U. S. C., Title 2, c. 8, Secs. 241-256). (Certificate 1.)

QUESTIONS CERTIFIED

The questions certified (C. 5) are as follows:

> Question No. 1: Where on a criminal indictment a demurrer is sustained and the indictment quashed on two grounds, one involving a construction of the statute and the other the interpretation of the indictment as a pleading, will an appeal lie at the instance of the United States from the trial court of the District of Columbia to the Court of Appeals of the District of Columbia?

If question No. 1 be answered in the affirmative, then

> Question No. 2: May the Court of Appeals of the District of Columbia on such appeal review the ruling of the trial court based on the construction of the statute?

STATEMENT OF CASE

The indictment (C. 1-3) and the demurrer thereto (C. 3) involve the construction of the Federal Corrupt Practices Act of February 28, 1925 (U. S. C., Title 2, Chapt. 8) with respect to the responsibility of the treasurer of a political committee to report to the Clerk of the House of Representatives on the several dates specified in the statute *indirect* contributions made *for* the committee (C. 3-4). The Supreme Court of the District of Columbia construed the statute in a written opinion and entered judgment sustaining the demurrer. The Court said (C. 3-4):

"A consideration of section 244, in the light of all other related provisions of the act, leads fairly to the conclusion that the legislative intention is to require the treasurer of a political committee to report only contributions received by him and those duly reported to or accounted for to him. Certainly it was not intended to hold one criminally responsible for failure to report a contribution of which he had no knowledge. This is a proposition advanced by the government to which I cannot assent. It calls for an unreasonable and harsh construction which is neither warranted by the nature of the act, its language, nor its intent. (C. 4) • • •

"Nor can I accept the alternative contention that those counts which charge a wilful failure by Burroughs to report contributions made *for* the committee impute to her knowledge of contributions received by another. The term 'wilful,' as used in these counts, is merely an adoption of the word employed in section 252 to differentiate in the penalties between a purposed and intentional violation of the act and one occurring thoughtlessly or accidentally through inadvertence or mistake." (C. 4.) (Italics ours.)

As the indictment in every count charged merely that the contributions were made by one E. C. Jameson *for* the committee without alleging to whom they were paid, or that they were ever accepted by the committee, or accounted for to the treasurer, or that the treasurer had knowledge thereof, the indictment was held fatally defective to charge an offense under the statute.

The facts shown by the Certificate are:

"Appellee Ada L. Burroughs, as treasurer of a political committee, known as the headquarters committee anti-Smith Democrats, is charged in

the indictment returned October 16, 1931, by a grand jury of the District of Columbia, under the Federal Corrupt Practices Act of February 28, 1925 (U. S. C., Title 2, Chap. 8), with failure to file with the Clerk of the House of Representatives of the United States written reports of contributions alleged to have been made by one E. C. Jameson for said political committee. Appellee James Cannon, Jr., is charged, in each count, with aiding and abetting appellee Burroughs in failing to file such reports. It is charged that the money was contributed for the purpose of influencing and attempting to influence the election of presidential and vice-presidential electors in two states.

"The indictment contains ten counts. The 1st, 3rd, 5th and 7th counts charge the appellees with feloniously failing to file the reports on the different dates specified in the statute. (C. 1.)

"The 2nd, 4th, 6th and 8th counts charge the appellees with unlawfully failing to file reports on the respective dates specified in the statute. (C. 1.)

"The 9th count charges the appellees with conspiring to commit the substantive alleged felonies charged in the preceding 1st, 3rd, 5th and 7th counts by failing to file the reports on the dates specified, while the 10th count charges a conspiracy to commit the substantive misdemeanors charged in the preceding 2nd, 4th, 6th and 8th counts by failing to file reports on the dates specified." (C. 1.)

The first count is set forth in full in the Certificate (C. 1-3) and it is declared, "and the remaining counts of the indictment are respectively similar." (C. 3.) Demurrer to the indictment was filed on the grounds that the Federal Corrupt Practices Act of February 28, 1925, upon which the indictment is based, is unconstitutional, and also that the indictment under the

statute properly construed, fails to state an offense (C. 3).

The trial court filed an opinion, set forth in the Certificate (C. 3) in which it held that it was unnecessary to pass upon the constitutional question involved but construed certain sections of the statute, as quoted hereinabove, and entered judgment, February 15, 1932, sustaining the demurrer (C. 3), from which the United States the same day in open court noted an appeal to the Court of Appeals of the District of Columbia. The record was filed in the Court of Appeals on April 11, 1932, more than thirty days after entry of judgment appealed from (C. 4).

Appellees filed in the Court of Appeals a motion to dismiss the appeal for want of jurisdiction, since the opinion of the trial court showed on its face that its judgment was based upon the construction of the statute upon which the indictment was founded, and therefore, the appeal lay only to the Supreme Court of the United States under the Criminal Appeals Act of March 2, 1907, 34 Stat. 1246 (Sec. 682, Title 18, U. S. Code). The motion was denied.

After the case had been briefed and argued on the merits, the Court of Appeals prepared a Certificate, its reasons for doing so being stated in Certificate (C. 4-5).

SUMMARY OF ARGUMENT

The United States having taken its appeal to the Court of Appeals of the District of Columbia instead of to the Supreme Court of the United States, and more than thirty days having expired since the entry

of the judgment, the Certificate should be dismissed. This appeal should have been taken in accordance with the Criminal Appeals Act (Section 682, Title 18, U. S. Code).

The Supreme Court of the District of Columbia is a district court of the United States within the meaning of the said criminal appeals act of March 2, 1907, allowing the United States a direct appeal to this Court in certain classes of criminal cases. The Court of Appeals of the District of Columbia has no appellate jurisdiction of a judgment sustaining a demurrer based upon the construction of the statute upon which the indictment is founded when the statute is a penal law having general application throughout the United States, as distinguished from a purely local law applicable only to the District of Columbia.

ARGUMENT

The Criminal Appeals Act Applies to Cases in the District of Columbia That Arise Under Penal Statutes Having General Application Throughout the United States

Counsel for the United States, in their brief, concede that the Supreme Court of the District of Columbia is a district court of the United States. The opinion of the justice of the Supreme Court of the District of Columbia, sustaining the demurrer, and also the certified questions before this Court, show that the decision of the trial court turned upon the construction of the statute upon which the indictment was founded. In such circumstances, under the law as settled by this Court in *United States* v. *Stevenson,* 215 U. S. 190,

construing the Criminal Appeals Act of March 2, 1907, the appeal of the United States lay only to this Court, unless by construction urged by the United States herein, the Supreme Court of the District of Columbia is excluded from the operation of the Criminal Appeals Act in criminal cases arising under laws having general application throughout the United States.

The instant case is one of first impression under certain sections of the Corrupt Practices Act of 1925—a law applicable throughout the United States, passed by Congress following the decision of this Court in *Newberry* v. *United States*, 256 U. S. 232. The opinion and judgment of the trial court in the case at bar involved the *construction* of that Act as it relates to the duty of a treasurer of a political committee to file with the Clerk of the House of Representatives reports of indirect contributions, alleged to have been made *for* the committee.

The trial court, in its opinion, construed the act and makes clear the distinction in the act between the responsibility of the treasurer of a political committee to report contributions made directly to the committee and the responsibility of the treasurer to report indirect contributions, *i.e.*, those made *for* the committee where it is not alleged (1) that the committee accepted the contributions, or (2) to whom the contributions were paid or (3) that the contributions were accounted for to the treasurer as provided in Sec. 243 of the act, or (4) that the treasurer had knowledge thereof.

It is our contention that by the Criminal Appeals Act of March 2, 1907, the United States is given the

limited right of direct review by this Court of criminal cases in the Supreme Court of the District of Columbia arising under penal statutes having general application throughout the United Sates *in any one of the three classes enumerated in the criminal appeals act,* but that the Court of Appeals of the District of Columbia has jurisdiction, under Secs. 226 and 935, D. C. Code of 1901, of appeals by the United States in all criminal cases arising under acts of Congress purely local to the District of Columbia. That Court likewise has jurisdiction of all other appeals in criminal cases by the United States or the District of Columbia.

STATUTES APPLICABLE TO JURISDICTION

Direct appeals from District Courts to the Supreme Court of the United States are provided for in Sec. 345, Title 28, U. S. Code (Jud. Code, Sec. 238, as amended):

> "A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following sections and not otherwise: • • •
>
> "(2) Section 682, of Title 18, where the decision of the district court is adverse to the United States."

Sec. 682, Title 18, provides:

> "WRIT OF ERROR: ON BEHALF OF THE UNITED STATES. A writ of error may be taken by and on behalf of the United States from the district courts direct to the Supreme Court of the

United States in all criminal cases, in the following instances, to wit:

"From a decision or judgment quashing, setting aside, or sustaining a demurrer to, any indictment, or any count thereof, where such decision or judgment is based upon the invalidity, or construction of the statute upon which the indictment is founded. * * *

"The writ of error in all such cases shall be taken within thirty days after the decision or judgment has been rendered and shall be diligently prosecuted and shall have precedence over all other cases."

The District of Columbia Code of 1929, Title 18, Section 43, relating to the Supreme Court of the District of Columbia, provides:

"The said court shall possess the same powers and exercise the same jurisdiction as the *district courts* of the United States, and shall be deemed a court of the United States." (Italics ours.)

Sec. 225, Title 28, U. S. Code, provides:

"(a) Review of final decisions. The circuit courts of appeal shall have appellate jurisdiction to review by appeal or writ of error final decisions—

"First. In the district courts, *in all cases save where a direct* review of the decision may be had in the Supreme Court under Section 345 of this title." * * * (Italics ours.)

Section 21, Title 1, of the D. C. Code of 1929, makes "all general acts of Congress not locally inapplicable in the District of Columbia" apply therein. *Compare Page* v. *Burnstine,* 102 U. S. 664; *Easterday* v. *Mc-*

Carthy, 256 Fed. 651 (C. C. A. 2nd) (1919); *Roney* v. *United States,* 43 App. D. C. 533.

The Certificate Should Be Dismissed Because the Court of Appeals Has No Jurisdiction of the Appeal

As the opinion of the trial court and the certificate show that the judgment of the trial court was based upon the construction of the statute, the Criminal Appeals Act applies.

United States v. *Keitel,* 211 U. S. 370;
United States v. *Stevenson,* 215 U. S. 190.

The reasoning of the authorities, hereinafter cited, shows that the Supreme Court of the District of Columbia occupies the same relation with respect to direct appeals under the Criminal Appeals Act of 1907 as any other district court of the United States.

Inasmuch as counsel for the United States entertained doubt with respect to the proper appellate court (of which we were advised by one of their briefs filed in the Court of Appeals), the appeal could have been noted to both courts, as was done by the United States in the case of *United States* v. *Sampson,* 19 App. D. C. 419 (1902), in which case the jurisdiction was in this court and the case was decided on the merits in *Infanta Maria Teresa,* 188 U. S. 283. The appeal in the instant case having been misdirected, and since the Transfer Act of September 14, 1922 (42 Stat. 837), was repealed by Sec. 13 of the Act of February 13, 1925 (43 Stat. 936), the Court of Appeals of the District of Columbia was without jurisdiction to certify questions to this Court and the certificate should be

dismissed. Compare *Heald* v. *District of Columbia,* 254 U. S. 20; *Sullivan* v. *Goldman,* 38 App. D. C. 319, *certiorari* denied, 225 U. S. 701.

A complete analogy is found in *Good Shot* v. *United States,* 179 U. S. 87. There an appeal was perfected to the Circuit Court of Appeals when the appellate jurisdiction was vested only in this Court. The Circuit Court of Appeals certified a question regarding its jurisdiction over the case. This court said that as the Circuit Court of Appeals had no jurisdiction the certificate should be dismissed or the question as to jurisdiction answered negatively and it could not even issue a writ of *certiorari* in order to save the appeal that was lost because it was misdirected. There is no longer any Transfer Act, and certification cannot be used to transfer the appeal. Compare *News Syndicate* v. *N. Y. Central Railroad Co.,* 275 U. S. 179. Furthermore, the thirty days allowed for appeal to this Court had expired when the record was filed in the Court of Appeals of the District of Columbia.

The Supreme Court of the District of Columbia Is a District Court of the United States Within the Meaning of the Criminal Appeals Act of March 2, 1907 (34 Stat. at L. 1246)

Title 18, D. C. Code, 1929, contains the following with respect to the Supreme Court of the District of Columbia:

> "Sec. 44. Same; general jurisdiction.—Said court, except as otherwise provided in this title, shall have cognizance of all crimes and offenses

committed within said district and of all cases in law and equity between parties, both or either of which shall be resident or be found within said district and also of all actions or suits of a civil nature at common law or in equity, in which the United States shall be plaintiffs or complainants; and of all seizures on land or water, and all penalties and forfeitures made, arising or accruing under the laws of the United States in the District.

"Sec. 47. Powers of justices.—The justices of said court, in addition to the powers and jurisdiction possessed and exercised by them as such, under this chapter, shall severally possess the powers and exercise the jurisdiction possessed and exercised by the judges of the district courts of the United States.

"Sec. 56. Special terms; designation.—The special terms of said court shall be known, respectively, as the circuit court, the equity court, the criminal court, the probate court, and the district court of the United States.

"Sec. 91. Jurisdiction.—The district court shall have and exercise the same powers and jurisdiction as other district courts of the United States, and such further special jurisdiction as may from time to time be conferred by Congress, and of all proceedings instituted in exercise of the right of eminent domain."

The Supreme Court of the District of Columbia is a court of the United States. Embry v. Palmer, 107 U. S. 3 (1882).

In Metropolitan R. R. Co. v. Moore, 121 U. S. 558 (1887), and Ormsby v. Webb, 134 U. S. 47 (1890), the history of the organization and the jurisdiction of the courts of the District of Columbia is fully discussed. From the inception of the District of Columbia, the original Circuit Court of the District of Columbia and

its successor, the Supreme Court of the District of Columbia, exercised the same jurisdiction with respect to criminal offenses against the United States as other Federal courts of original jurisdiction.

In the Ormsby case, *supra,* it is said (p. 808).

> "The Act of February 27, 1801, concerning the District of Columbia (2 Stat. 103), created the Circuit Court of the District, with all the powers in such court and the judges thereof that were vested by law in the circuit courts and judges of the circuit courts of the United States, and with jurisdiction of all crimes and offenses committed in the District, and of all cases in law and equity between parties, both or either of which shall be residents thereof."

In Benson v. Henkel, 198 U. S. 1 (1905), it was held that the District of Columbia is a district of the United States within the meaning of U. S. R. S. 1014, authorizing the removal for trial of a person charged with an offense against the United States to the Federal district where the trial is to be held, although the section (R. S. 1014) was taken from the Judiciary Act of 1789, when the District of Columbia was not in existence, and the Supreme Court of the District of Columbia was not in existence. The Supreme Court of the District of Columbia was held to be a court of the United States within the meaning of R. S. 1014.

Page v. Burnstine, 102 U. S. 664 (1880), held that the provisions of the Revised Statutes of the United States, that no party to an action by or against a personal represenative can testify against his adversary as to any transaction with or statement by the deceased, unless called to testify thereto by the opposite party or by the court, applies to the courts of the Dis-

trict of Columbia, as fully as to the Circuit and District Courts of the United States.

In United States to the use of Hine v. Morse, 218 U. S. 493 (1910), the court said:

> "The supreme court of the District is one of general jurisdiction. It possesses all of the powers which by statute are conferred upon the circuit and district courts of the United States. D. C. Rev. Stat., Secs. 760 and 765."

In Federal Trade Commission v. Klesner, 274 U. S. 145, 158 (1927), with respect to the courts of the District of Columbia, this Court said:

> "We think we may use the same liberality of construction in this case. We find here a court which by acts of Congress is to be treated as a district court of the United States, and we find here a court of appeals which by the terms of its creation is exercising reviewing power over all Federal cases proceeding from that district court of the United States by appeal or writ of error so that it is exercising exactly the same function as the circuit court of appeals does with respect to the district courts within their respective territorial jurisdictions in the other parts of the United States. The services of this district court of the United States in the District of Columbia are to be availed of under the Trade Commission Act when necessary in compelling evidence by the express words of the act. We must conclude that Congress in making its provision for the use of the circuit courts of appeal in reviewing the commission's orders intended to include within that description the court of appeals of the District of Columbia as the appellate tribunal to be charged with the same duty in the District. The law was to be enforced and presumably with the same

effectiveness in the District of Columbia as elsewhere in the United States. * * *

In Swift & Company v. United States, 276 U. S. 311, 324 (1928), it was said:

> "First. At the time the questions were certified, there was a contention that the Supreme Court of the District lacked jurisdiction of the subject matter, because it is not a district court of the United States within the meaning of the Anti-Trust Act. * * * We are of opinion that this suit under Sec. 4 of the Anti-Trust Act, which could only have been brought in a court of equity, was properly brought in the Supreme Court of the District, sitting in equity. This conclusion has support in established practice in analogous cases."

In United States v. California Co-Operative Canneries, 279 U. S. 553, 558 (1929), it was said:

> "For the enforcement of the Anti-trust Act within the District of Columbia, its supreme court has jurisdiction corresponding to that which is exercised by the federal district courts in the several districts; and the appellate jurisdiction of the court of appeals of the District corresponds to that of the several circuit courts of appeals."

See also Claiborne-Annapolis Ferry Company v. United States, 285 U. S. 385 (1932).

Decisions of the Court of Appeals of the District of Columbia Regarding the Jurisdiction Exercised by the Supreme Court of the District of Columbia

In United States v. Sampson, 19 App. Cas. D. C. 419 (1902) the Court of Appeals of the District construed Section 7 of the act of February 7, 1893 (27 Stat. 434;

Sec. 226, D. C. Code 1901, Sec. 26, T. 18, D. C. Code 1929, as to appeals to the Court of Appeals of the D. C. from the Supreme Court of the District of Columbia), and Section 762, R. S. D. C. (authorizing any justice of the Supreme Court of the District to hold a special term with the same powers and jurisdiction possessed and exercised by district courts of the United States), and Sections 695 and 698, R. S. U. S. (providing a direct appeal to the Supreme Court of the United States in prize cases) and held that the appellate jurisdiction of the Supreme Court of the United States to be exclusive.

In that case, the United States noted two appeals, one to the Court of Appeals and the other to the Supreme Court of the United States.

In discussing the jurisdictional question, the Court of Appeals, per Chief Justice Alvey, said in the Sampson case, *supra* (pp. 431):

> "If, therefore, the justice holding the special term of the Supreme Court of the District, as a district court, with the *same powers and jurisdiction possessed and exercised by other district courts of the United States,* it would seem to be too clear for any question to be made, that the special term so held for the exercise of the jurisdiction designated, must be regarded and treated as a prize court in the same sense, and to the like extent, of the other district courts of the United States. • • •

(P. 439.) "Upon full consideration, I am of opinion, for the reasons stated, that this appeal

has been improvidently and without legal warrant taken to this court, and it must, therefore, be *dismissed.*

"But, with a view of preserving the appeal taken to this court, in the event that the Supreme Court should decide that such appeal was rightfully taken to this court, and not to the Supreme Court direct, I think it would be proper to withhold the order dismissing the appeal until the question can be passed upon by the Supreme Court, on an appeal from the District Court, unless it be desired by the appellant to take an appeal to the Supreme Court from the order dismissing this appeal—in which case the order of dismissal will be entered at once."

This Court decided the case on its merits in Infanta Maria Teresa, 188 U. S. 283.

In Moss v. U. S., 23 App. D. C. 475 (1904), the appellant was adjudged guilty of contempt for remarks he made to a jury while the latter were in the custody of a deputy marshal, and he was sentenced to fine *and* imprisonment. The Court held that R. S. U. S., Sec. 725, limiting punishment for contempt of courts of the United States to fine *or* imprisonment applied to the Supreme Court of the District of Columbia. The Court of Appeals said (page 484):

"In addition to the foregoing consideration and authority for maintaining that the Supreme Court of this District is a court of the United States, Congress, in adopting the code of laws for the District, by Sec. 61 thereof, has declared that the Supreme Court of the District 'shall possess the same powers and exercise the same jurisdiction as

the circuit and district courts of the United States, and shall be deemed a court of the United States'; and by Sec. 1 of the Code it is declared that 'all the general acts of Congress not locally inapplicable in the District of Columbia * * * shall remain in force' in this District. These, however, are nothing more than general legislative declarations in affirmance of pre-existing decisions upon the subject. It has been held that Sec. 15 of the judiciary act of 1789, now embodied in Sec. 724 of the Revised Statutes of the United States, U. S. Comp. Stat., 1901, p. 583, relating to the power to compel the production of books and writings in actions at law, was in force and applied in actions brought in the courts of this District. Maye v. Carberry, 2 Cranch C. C. 336, Fed. Cas. No. 9,339; Bank of U. S. v. Kurtz, 2 Cranch C. C. 342, Fed. Cas. No. 920; Thompson v. Seldon, 20 How. 194, 15 L. Ed. 1001. And so in regard to Sec. 32 of the judiciary act of 1789, relating to amendments of pleadings, it has been held that that section was in force and applied in the courts of this District. Garland v. Davis, 4 How. 131, 11 L. Ed. 907. And more recently, it has been held by the Supreme Court that the general act of Congress, relating to the competency of parties as witnesses, applied in the Courts of this District as it did in all the other courts of the United States. Page v. Burnstine, 120 U. S. 664, 26 L. Ed. 268."

In U. S. v. B. & O. R. R. Co., 26 App. D. C. 581 (1906), it was held that the Supreme Court of the District of Columbia had jurisdiction of a suit brought by the United States under the Safety Appliance Act of March 2, 1893, to recover a penalty where it provided that such suit should be brought in the District Court of the United States having jurisdiction, the court declaring that the special court of the Supreme Court

of the District of Columbia known as the Circuit Court had jurisdiction.

In Hyattsville Building Association v. Bouic, 44 App. D. C. 408 (1916), the Court held that the Supreme Court of the District of Columbia is a court of the United States within the meaning of Section 265 of the Judicial Code providing that no court of the United States shall grant any writ of injunction to stay proceedings in a state court, except in bankruptcy matters.

Arnstein v. U. S., 54 App. D. C. 199, 296 Fed. 946 (1924), held that the Supreme Court of the District of Columbia is a district court of the United States within Sec. 340 of the Penal Code providing that the offense of conspiracy to commit an offense against the United States denounced by Section 37, shall be cognizable in the District Courts of the United States.

In re McFarland, 30 App. D. C. 365 (1908), appeal dismissed on motion of appellant, 215 U. S. 614, involved the right of the Court of Appeals of the District to grant a writ of prohibition and the Court held that the Supreme Court of the District is one of the inferior courts of the United States under Section 1, Article 3 of the Constitution and possessed the same power and jurisdiction as the circuit and district courts of the United States.

In Pitts v. Peak, 60 App. D. C. 195, 50 Fed. (2d) 487 (1931) (cited approvingly in Claiborne-Annapolis Ferry Co. v. United States, 285 U. S. 382, 391), the petitioner was convicted in the Supreme Court of the District under an indictment charging conspiracy

under Section 37 of the Federal Criminal Code (U. S. C., Title 18, Sec. 88). Section 340, Criminal Code, (U. S. C., Title 18, Sec. 546), makes such offenses triable in the district court of the United States. After conviction, petitioner sought release upon *habeas corpus* on the ground that the Supreme Court of the District was not a district court of the United States. The Court of Appeals said:

> "We think a reasonable and correct view of the subject would indicate that, in the creation and organization of the superior courts of the District of Columbia, Congress has availed of its dual constitutional right in the first place to establish courts of law and invest them, as it has, with power and jurisdiction over all cases and controversies which, under the authority of article 3, it has invested the district courts of the United States, and, in the second place, in the exercise of the power of a sovereign state, under the provisions of section 8 of article 1, has further imposed upon them jurisdiction and power which it cannot impose upon other like courts functioning outside the district. • • •
>
> "We therefore reach the conclusion that the Supreme Court of the District of Columbia, by that name, is a proper tribunal, under the acts of Congress, for the trial of offenses which outside the District would be triable in a District Court, and that therefore the denial of the *habeas corpus* and the dismissal of the writ was in all respects correct and should be and is affirmed." ·

In United States v. Denison, 60 App. Cas. 71, 47 Fed. (2d) 433, 435 (1931), the exact questions whether the Supreme Court of the District of Columbia is a District Court of the United States within the meaning of the criminal Appeals Act of March 2, 1907, and whether

that Act was applicable in this District were involved. The defendant was indicted for possessing intoxicating liquor in violaton of the National Prohibition Act. From a judgment sustaining defendant's demurrer to the indictment, the United States appealed to the Court of Appeals. The defendant, Denison, moved to dismiss the appeal on the ground that the judgment of the trial court was based on the construction of the statute upon which the indictment was founded, and that, therefore, the appeal should have been taken by the United States to the Supreme Court of the United States.

In the opinion, the Court says that the demurrer assailed the indictment on the ground that "it was insufficient in substance, too vague, indefinite and uncertain, to fairly or sufficiently inform the defendant of the charge he is expected to meet at the trial" and other grounds affecting the indictment only as a pleading.

In denying the motion to dismiss, the Court of Appeals said with reference to the Criminal Appeals Act:

> "It is urged that an interpretation of the statute in question is here involved which can only be reviewed by the Supreme Court of the United States under section 682, title 18, U. S. Code (18 U. S. C. A. Sec. 682), which provides: 'A writ of error may be taken by and on behalf of the United States from the district courts direct to the Supreme Court of the United States in all criminal cases, in the following instances, to-wit: From a decision or judgment quashing, setting aside, or sustaining a demurrer to, any indictment, or any count thereof, where such decision or judgment is based upon the invalidity, or construction of the statute upon which the indictment is founded.'
>
> "This relates to procedure by writ of error from

a District Court of the United States to the Supreme Court. It is settled beyond question that the Supreme Court of the District of Columbia in a proceeding of this sort exercises the jurisdiction of a District Court of the United States, and as such would come within the provisions of the Criminal Code here in question. Arnstein v. United States, 54 App. D. C. 199, 296 F. 946; Federal Trade Commission v. Klesner, 274 U. S. 145, 47 S. Ct. 557, 71 L. Ed. 972; Swift & Co. v. United States, 276 U. S. 311, 48 S. Ct. 311, 72 L. Ed. 587.

"This right to proceed by error to the Supreme Court, however, only lies where the validity or construction of the statute is involved. No such question here arises, since we are dealing solely with the sufficiency of the indictment to charge a crime under the statute. Besides, the validity and construction of this statute has been so often upheld by the courts as to wholly deprive a defendant of the right to proceed on either of the grounds provided. Where the construction of a statute and its validity have been adjudicated, the right to proceed by writ of error from a District Court to the Supreme Court on either of these grounds will no longer be recognized."

The Court of Appeals of the District of Columbia Is a Circuit Court of Appeals

Counsel for the United States in their brief (p. 9) contend that the Criminal Appeals Act has no application to the Supreme Court of the District of Columbia because the Act does not "in terms apply to the Supreme Court of the District of Columbia."

In Federal Trade Commission v. Klesner, 274 U. S. 145, 155, the facts were that the Commission entered an order against the respondent who was engaged in com-

merce within the District of Columbia requiring him to cease and desist from unfair methods of competition therein. Klesner refused to obey the order, and the Commission applied to the Court of Appeals of the District of Columbia for a decree of enfarcement. That court, without considering the merits of the case, held that it was without jurisdiction and dismissed the petition. The Federal Trade Commission Act, Sec. 5, provides, "The jurisdiction of the Circuit Courts of Appeals of the United States to enforce, set aside, or modify orders of the Commission shall be exclusive." On *certiorari*, in reversing, this court upheld the jurisdiction of the Court of Appeals of the District of Columbia, although that court by its exact title is not named in the statute.

Nevertheless, in interpreting the legislative intent of Congress, this Court held that the statute means that the Court of Appeals of the District of Columbia has the same jurisdiction to enforce orders of the Federal Trade Commission relating to matters within the District of Columbia that is conferred by the Federal Trade Commission Act on the United States Circuit Courts of Appeals.

This court said (p. 156):

> "The parallelism between the Supreme Court of the District and the Court of Appeals of the District, on the one hand, and the District Courts of the United States and the circuit courts of appeals, on the other, in the consideration and disposition of cases involving what among the states would be regarded as within federal jurisdiction, is complete."

In Swift & Company v. United States, 276 U. S. 311,

this Court held that the Court of Appeals of the District of Columbia comes within the meaning of the former Transfer Act of September 14, 1922, which provided that, "If any appeal or writ of error has been or shall be taken to, or issued out of, *any Circuit Court of Appeals* in a case wherein such appeal or writ of error should have been taken to or issued out of the Supreme Court" that it should be transferred, saying:

> "We think, however, that it was a Circuit Court of Appeals within the meaning of the Transfer Act and as the judgment appealed from was entered before the effective date of Fbruary 13, 1925, the appeals should have been transferred to this court."

In United States v. California Co-Operative Canneries, 279 U. S. 557, 558, 73 L. Ed. 838, 842 (1929), this Court says:

> "For the enforcement of the Anti-trust Act within the District of Columbia, its supreme court has jurisdiction corresponding to that which is exercised by the federal district courts in the several districts; and the appellate jurisdiction of the court of appeals of the District corresponds to that of the several circuit courts of appeals. * * * The purpose of Congress to expedite such suits would obviously be defeated if in the District of Columbia an appeal lay to the court of appeals from a denial of a motion for leave to intervene."

See also:

Claiborne-Annapolis Ferry Co. v. United States, 285 U. S. 382, 391, 76 L. Ed. 814 (1932).

Pitts v. Peak, 60 App. Cas. D. C. 195, 50 Fed. (2) 485.

Compare: United States v. Denison, 60 App Cas. D. C. 71 (1931), 47 Fed. (2) 433, 435.

Statutes Applicable to the District of Columbia

Counsel for the United States contend that this Court should decide that the Supreme Court of the District of Columbia is excepted from the provisions of the Criminal Appeals Act, a general law of the United States, by reason of Secs. 935 and 226, D. C. Code (1901).

The Court of Appeals of the District of Columbia was created by the Act of February 9, 1893 (27 Stat. 434). The appellate jurisdiction of that Court is contained in Sec. 226 of the D. C. Code (Sec. 26, Title 18, D. C. Code, 1929), which provides:

> "Sec. 226. JURISDICTION—Any party aggrieved by any final order, judgment, or decree of the Supreme Court of the District of Columbia, or of any justice thereof, including any final order or judgment in any case heard on appeal from a justice of the peace, may appeal therefrom to the said court of appeals; and upon such appeal the court of appeals shall review such order, judgment, or decree, and affirm, reverse, or modify the same as shall be just, except as provided in the following sections. *Appeals shall also be allowed to said court of appeals from all interlocutory orders of the supreme court of the District of Columbia, or by any justice thereof,* whereby the possession of property is changed or affected, such as orders for the appointment of receivers, granting injunctions, dissolving writs of attachment, and the like; and also from any other interlocutory order, in the discretion of the said

court of appeals, whenever it is made to appear to said court upon petition that it will be in the interest of justice to allow such appeal." (Italics ours.)

Section 226, *supra*, provides for appeals from final judgments, and also authorizes the Court of Appeals of the District to allow special appeals from interlocutory orders. In Ainsworth v. United States, 1 App. Cas. D. C. 518 (1893), the Court of Appeals allowed a special appeal to Ainsworth, defendant in a criminal case, whose demurrer to an indictment had been overruled by the Supreme Court of the District of Columbia. The Court of Appeals reversed the order, and thereafter a second indictment was found by the grand jury against Ainsworth. The trial court sustained defendant's demurrer to the second indictment. Thereupon, the United States noted and perfected a general appeal to the Court of Appeals from the order sustaining defendant's demurrer. On motion of the defendant, the Court of Appeals, on the authority of United States v. Sanges, 144 U. S. 310, dismissed the appeal of the United States, holding that the general language in Sec. 226 of the Code, D. C., did not expressly authorize an appeal by the United States in a criminal case. United States v. Ainsworth, 3 App. Cas. D. C. 483 (1894).

This situation obtained in the District of Columbia until 1901, when Congress enacted Sec. 935 of the Code (Sec. 355, Title 6, D. C. Code, 1929), which provides:

"Sec. 935. APPEALS BY UNITED STATES AND DISTRICT OF COLUMBIA.—In all criminal prosecutions, the United States or the District of Columbia, as the case may be, shall have

> the same right of appeal that is given to the defendant, including the right to a bill of exceptions: *Provided,* That if on such appeal it shall be found that there was error in the rulings of the court during a trial, a verdict in favor of the defendant shall not be set aside."

This section undertook to allow to the United States or the District of Columbia the same right of appeal to which a defendant is entitled. In United States v. Evans, 28 App. D. C. 264 (1906), the trial court sustained a demurrer to an indictment charging murder, because of the insufficiency of the indictment as a pleading. The judgment sustaining the demurrer was reversed, and the defendant was tried, acquitted and discharged. Thereupon, the United States took a general appeal, claiming the right to do so under Sec. 935 of the D. C. Code, from the ruling of the trial court in excluding an alleged confession of the defendant, but the Court of Appeals held that, notwithstanding the language of Sec. 935, D. C. Code, an appeal by the United States would not lie from a judgment discharging the accused after a verdict of not guilty based upon exceptions taken during the trial. United States v. Evans, 30 App. Cas. D. C. 58 (1907). On *certiorari,* this Court sustained the ruling. United States v. Evans, 213 U. S. 297 (1909).

In view of the foregoing decisions, that part of Sec. 935 of the Code, D. C., reading as follows:

> "Provided that if on such appeal it shall be found that there was error in the rulings of the court during the trial, a verdict in favor of the defendant shall not be set aside,"

became ineffective, and all that remains of the statute (Sec. 935) reads as follows:

> "In all criminal prosecutions the United States or the District of Columbia, as the case may be, shall have the same right of appeal that is given to the defendant."

On July 3, 1926, Congress passed an act (44 Stat. 831, Title 18, Sec. 27, Code D. C., 1930), providing:

> "That nothing contained in any Act of Congress shall be construed to empower the Court of Appeals of the District of Columbia to allow an appeal from any interlocutory order entered in any criminal action or proceeding or to entertain any such appeal."

Inasmuch as a defendant since 1926 has no right to a special appeal to the Court of Appeals from an interlocutory order of any nature in a criminal case, the United States has no such right under Sections 935 and 226.

On March 2, 1907, Congress enacted the Criminal Appeals Act (34 Stat. 1246, U. S. C. Title 18, Sec. 682), a general law, allowing the United States the right of direct appeal limited in its nature from a decision of a district court in criminal cases in three specified instances. The Act is as follows:

> "That a writ of error may be taken by and on behalf of the United States from the district or circuit courts direct to the Supreme Court of the United States in all criminal cases, in the following instances, to wit:
>
> "From a decision or judgment quashing, setting aside, or sustaining a demurrer to, any indictment, or any count thereof, where such decision or judgment is based upon the invalidity, or construction of the statute upon which the indictment is founded.

"From a decision arresting a judgment of conviction for insufficiency of the indictment, where such decision is based upon the invalidity or construction of the statute upon which the indictment is founded.

"From the decision or judgment sustaining a special plea in bar, when the defendant has not been put in jeopardy.

"The writ of error in all such cases shall be taken within thirty days after the decision or judgment has been rendered and shall be diligently prosecuted and shall have precedence over all other cases.

"Pending the prosecution and determination of the writ of error in the foregoing instances, the defendant shall be admitted to bail on his own recognizance: *Provided,* That no writ of error shall be taken by or allowed the United States in any case where there has been a verdict in favor of the defendant."

[The words "circuit courts" are omitted in the text in the U. S. Code since the Act of Congress abolished circuit courts.] Judicial Code, 36 Stat. 1167.

In direct appeals brought under the Criminal Appeals Act where demurrers to indictments have been sustained, this Court has held that it confers jurisdiction upon this Court to pass only upon the question of the construction of the statute upon which the indictment is founded. United States v. Keitel, 211 U. S. 230; United States v. Stevenson, 215 U. S. 200.

No jurisdiction is conferred to pass upon the sufficiency of the indictment under the general principles of criminal pleading. United States v. Keitel, 211 U. S. 230; United States v. Biggs, 211 U. S. 507.

Where a demurrer to an indictment is sustained upon the ground that it is bad in law without opinion, it is necessary for the parties to request a specification of the grounds upon which the decision was made, as this Court will not undertake from the record to determine upon what grounds it was based. United States v. Carter, 231 U. S. 492.

Where the opinion is ambiguous, this Court will determine for itself whether its decision was based upon a construction of the statute upon which the indictment was founded. United States v. Carter, *supra;* United States v. Colgate & Co., 250 U. S. 300.

Where the effect of the decision was to hold that the act charged did not fall within the condemnation of the statute, the trial court necessarily construed the statute and the case is correctly here. United States v. Birdsall, 233 U. S. 223; United States v. Patten, 226 U. S. 525.

Where both the construction of the statute and the sufficiency of the indictment as a pleading are involved, this Court will pass upon only construction of the statute. United States v. Stevenson, 215 U. S. 190; United States v. Patten, 226 U. S. 525.

Construing the Criminal Appeals Act of 1907, a later act applicable to all district courts of the United States, in connection with Sections 226 and 935, D. C. Code, to give effect to the purpose of Congress, the result is that the United States is allowed the limited right of direct review by this Court of criminal cases arising in the District of Columbia in any of the three classes of cases enumerated in the Criminal Appeals Act where the prosecution is under Acts of Congress having general application throughout the United

States as distinguished from purely local laws of the District of Columbia while Sections 226 and 935 of the D. C. Code provide for appeals in all other such criminal cases arising in the district.

The defendant in a criminal case in the District of Columbia has a right to an appeal to the Court of Appeals from a final judgment against him. The United States also has the right to appeal to that court from a final judgment in favor of a defendant in a criminal case where demurrers are sustained based upon the alleged insufficiency of the indictment as a pleading (*United States* v. *Denison,* 60 App. D. C. 71, 47 Fed. (2) 433 (1931) and where a plea in abatement to indictment has been sustained. *United States* v. *Halstead,* 38 App. Cas. D. C. 69 (1912); *United States* v. *Griffith,* 55 App. Cas. D. C. 123, 2 Fed. (2d) 925 (1924); *United States* v. *Fall,* 56 App. Cas. D. C. 83 (1925), 10 Fed. (2d) 648; *United States* v. *Doheny,* 56 App. Cas. D. C. 86 (1925), 10 Fed. (2d) 651.

This leaves unimpaired the exercise of appellate jurisdiction by the Court of Appeals of the District of Columbia, under Sections 226 and 935 of Code, D. C., in cases involving the construction or validity of Acts of Congress purely local to the District of Columbia, as in *United States* v. *Cella,* 37 App. 423 (1912), *certiorari* denied, 223 U. S. 728, in conformity to the principle announced in *American Security and Trust Co.* v. *District of Columbia,* 224 U. S. 491 (1912); *United Surety Co.* v. *American Fruit Growers Product Co.,* 238 U. S. 140 (1915), and *McGowan* v. *Parish,* 228 U. S. 312 (1913), and the right of the United States to appeal from the police court to the Court of Appeals, as well as the right of the District of Columbia to

appeal from the police court and from the juvenile court to the Court of Appeals.

The purpose of the Criminal Appeals Act of March 2, 1907, was to provide for and promote the expeditious settlement of questions involving statutory construction or constitutionality of general acts of Congress. This was pointed out by this Court in the case of *United States* v. *Stephenson,* 215 U. S. 190, and *United States* v. *Bitty,* 208 U. S. 393. It is stated in Hughes' Federal Practice, Jurisdiction and Procedure, Vol. V, Secs. 3091 and 3092:

> "The reason for allowing the United States a direct appeal in criminal cases coming within the Criminal Appeals Act is given by Chief Justice Taft as follows:
>
> " 'The reason for this exception is doubtless in the need for expedition in securing a final construction of new criminal statutes by the court of last resort, so that the government and those charged with violating the new law may have the earliest possible final interpretation of what the new law means, and long trials and convictions which might subsequently be set aside because of a faulty interpretation of the statute, may be avoided. Expedition and uniformity in construction are thus the controlling considerations.'
>
> "See the jurisdiction of the Supreme Court under Act of February 13, 1925, by Wm. Howard Taft, 35 Yale Law Journal 1 (6)."

Cases Cited by the Government Distinguished

The cases cited by counsel for the United States in which it is asserted that the Court of Appeals of the

District of Columbia has since 1907 entertained jurisdiction of appeals coming within the terms of the Criminal Appeals Act of March 2, 1907, are:

United States v. *Evans,* 30 App. D. C. 58, decided June 4, 1907. This was an appeal by the United States under Sec. 935, D. C. Code, from a judgment in the Supreme Court of the District of Columbia discharging the accused in a homicide case after a verdict of acquittal. This case is no authority against the contention that the Criminal Appeals Act applies to the District of Columbia for the following reasons:

1. The transcript of the record in the Evans case shows that the verdict of acquittal and judgment were entered in the Supreme Court of the District of Columbia on February 1, 1907, and that the United States on the same day in open court noted an appeal to the Court of Appeals of the District of Columbia. Under the practice in the District as settled by the Court of Appeals, the notation of the appeal was the perfection of it (*District of Columbia* v. *Roth,* 18 App. D. C. 547) (1901), inasmuch as neither the District of Columbia nor the United States is required by law to file an appeal bond. The jurisdiction of the appeal, therefore, could not have been affected by the Criminal Appeals Act, which was not enacted until March 2, 1907.

2. The appeal being from a judgment of acquittal, the United States could not have appealed under Sec. 935, Code D. C. (*United States* v. *Evans,* 213 U. S. 297, *certiorari* quashed, s. c., 30 App. Cas. 58) nor under the Criminal Appeals Act for the reason that it provides:

"That no writ of error shall be taken by or allowed the United States of any case where there has been a verdict in favor of the defendant."

3. This Court held in *United States* v. *Sanges,* 144 U. S. 310 (1892), that the United States had no right of appeals in a criminal case after a verdict of acquittal. The Sanges case controlled the decision of the Court of Appeals of the District in the *United States* v. *Ainsworth,* 3 App. Cas. D. C. 483 (1894).

4. While the Court of Appeals in its opinion in the Evans case (30 App. 58) mentioned the Criminal Appeals Act of March 2, 1907, its application to the District of Columbia was not urged nor was that question decided.

In discussing the case of *Evans* v. *United States,* 30 App. D. C. 58, counsel for the United States in their brief (p. 23) state that in that case the Court of Appeals "permitted an appeal to it by the United States in at least one of the classes of cases covered by the Criminal Appeals Act, *i.e.,* where the court of first instance sustains a special plea in bar and the defendant has not been put in jeopardy." This is an error. No such question was involved in the Evans case. An examination of the transcript of the record shows that the plea of the defendant was not quilty to an indictment for murder. No special plea in bar was filed. Compare *United States* v. *Storrs,* 272 U. S. 652. In the Evans case, the trial court excluded a certain alleged confession of the defendant at the trial, to which ruling the United States excepted, and the jury returned a verdict of not guilty on February 1, 1907, a month prior to the passage of the Criminal Appeals Act, and on February 1, 1907, the United

States noted an appeal to the Court of Appeals, under Sec. 935 of the D. C. Code. The appeal was dismissed by the appellate court, because the United States could not maintain an appeal when a defendant has been acquitted. The opinion of the Court of Appeals was rendered June 4, 1907, in which the Court recites the existence of the Criminal Appeals Act and merely refers to the fact that the United States has the right of appeal thereunder when a special plea in bar of the defendant is sustained. No such question was involved in that case and no decision was made in reference thereto.

United States v. *Cella*, 37 App. D. C. 424 and 433, (1911), appeals by the United States in two cases, from the judgment of the Supreme Court of the District of Columbia sustaining demurrers to an indictment for criminal conspiracy to violate a purely *local statute* exclusively applicable to the District of Columbia entitled, "An Act to prohibit bucketing and bucket shopping and to abolish bucket shops," approved March 1, 1909. (Code D. C. Title 6, Sec. 158, *et seq.*) Demurrers were interposed attacking the constitutionality of the act and the sufficiency of the indictment as a pleading, which demurrers were sustained and judgment entered ordering the defendant to go hence without day. The Government noted an appeal to the Court of Appeals of the District of Columbia under Sec. 935 of the D. C. Code. A motion to dismiss for want of jurisdiction was filed on two grounds, as shown by the transcript of the record in the Court of Appeals, namely (1) whether the p[illegible]ase "right of appeal" as used in Sec. 935, Code, D. C., was enough to confer definite appellate jurisdiction, and

(2) whether Sec. 935, as construed by this court in *United States* v. *Evans,* 30 App. D. C. 58, and 213 U. S. 297, allowed the United States to apply only when defendant had not been put in jeopardy. The opinion of the Court of Appeals shows that it did not discuss nor decide the effect of the Criminal Appeals Act of 1907 upon the right of the Government to appeal to this court. Petition for *certiorari* was denied, 223 U. S. 728. The petition for *certiorari* and brief in this court, Nos. 891 and 892, October term, 1911, have been examined, and it appears therefrom that no contention was made before this court with respect to the application of the Criminal Appeals Act of March 2, 1907, to the Supreme Court of the District of Columbia.

The Cella case is not in opposition to the contention advanced herein in view of the fact that it involved a prosecution under an act of Congress applicable exclusively to the District of Columbia, and is, therefore, controlled by the principles of law announced by this court in *American Security and Trust Co.* v. *Commissioners of the District of Columbia,* 224 U. S. 491; *McGowan* v. *Parish,* 228 U. S. 310, and *U. S. Surety Company* v. *American Fruit Products Co.,* 238 U. S. 140.

The instant case, on the other hand, involves a prosecution under the Federal Corrupt Practices Act of 1925, a general penal law of the United States.

Answers to Some of the Contentions of the United States

The suggestion of the counsel for the United States is made in their brief (p. 25) that cases might arise in the Police Court or the Juvenile Court of the District

of Columbia involving the violation of statutes having general application in the United States. If so, and if such cases should be decided adversely to the United States in those courts, the United States would not have the right of direct appeal therefrom to this Court under the Criminal Appeals Act for the reason that neither the Police Court nor the Juvenile Court is held to be a district court of the United States.

The intimation made by counsel for the United States that should this Court hold the Criminal Appeals Act applies to the District of Columbia, it would seriously increase the number of appeals to this Court is best refuted by the Government's statement in its brief. After the most diligent and exhaustive research of the record of appeals by the United States to the Court of Appeals which have been taken in the past 26 years, since the Criminal Appeals Act was enacted in 1907, the government has been able to cite this Court only two cases which it is claimed could have been appealed to this Court under the Criminal Appeals Act, and as has been shown, in neither of these cases could the United States have maintained an appeal to this Court.

We submit that the object of the Criminal Appeals Act, in granting to the Government the right of a limited or restrictive review by direct appeal to this Court from a district court of the United States, regardless of the district in which the decision adverse to the United States is made, was to obtain an early decision of this Court definitely settling the question of law for the entire country. It is significant that the Act itself provides that the writ of error (now appeal) shall be taken in thirty days—a clear legislative decla-

ration that Congress intended that there should be no unnecessary delay in expediting the appeal. The Act is obviously silent as to any of the circuit courts of appeals. A final determination of judicial construction for the benefit of the Government, as well as the public is just as important for the District of Columbia, and perhaps more so, as in any other federal district.

If the unusual contention insisted upon by the Government in the instant case prevails, then a statute having application throughout the United States may be construed one way in one federal district, and the same statute may be construed directly opposite thereto by the Court of Appeals of the District of Columbia. The Court of Appeals of the District of Columbia might not agree with the decision of a district court outside of this District, and the decision of the Court of Appeals would not be binding upon a district court outside of the District of Columbia. In the situation thus supposed, the conflict would result in an application to this Court for *certiorari*. The construction of the Criminal Appeals Act contended for by us is consonant with uniformity of federal procedure and is consistent with the purpose of the ordinary meaning of the language of the Act.

The adoption of the contention of counsel for the Government would exclude the District of Columbia from beneficial and remedial legislation in the practice and procedure in relation to the administration of criminal laws. If their contention is correct, then upon a decision by a District Court of the District of Columbia, adverse to the United States, in regard to a general law of the United States, an appeal can be

taken to the Court of Appeals of the District of Columbia, and if the trial court is sustained, the United States could seek a *certiorari* from this Court; and if the trial court is reversed, then the defendant may seek a *certiorari.*

The prosecuting officer frequently claims that a defendant seeks unnecessary delay in the final disposition of a case, but the effect of the Government's position in this case, in urging a strained construction of the Criminal Appeals Act is to cause unnecessary and prolonged delay in the final disposition of a criminal case arising under a law having general application throughout the United States, especially the Corrupt Practices Act, the construction of which is involved in the instant case. This Court will take judicial notice of the fact that after elaborate and expensive hearings by a Committee of the Senate of the United States with reference to regulating the expenditure of money in the election of presidential and vice-presidential electors, a proposed new Act was suggested and report of the Committee was made to the last Congress, but no action has been taken thereon. It is well known that doubts have arisen in regard to the vexed question whether Congress has the constitutional power to enact such legislation regulating the choosing of presidential electors.

The indictment was found in the instant case on October 16, 1931, and the trial Court rendered its decision on February 15, 1932. If the United States had exercised its right of direct appeal within thirty days under the Criminal Appeals Act to this Court where jurisdiction is exclusive, the case would have been finally disposed of long prior hereto. By the inad-

vertence of the counsel for the Government in taking an appeal to a wrong court, counsel for the Government, in its effort to save its appeal, is compelled to place a narrow construction on the Criminal Appeals Act, *i.e.*, to exclude from its operative effect one of the most important district courts of the United States.

The suggestion of counsel for the United States in their brief (pp. 25-26) that to permit review by this Court from judgments of the Supreme Court of the District might "add to the burdens of this Court by requiring it to consider statutes which are only of local importance" is inconsistent with their assertion (Government's brief, p. 9) that "there has never been an appeal to this Court from any judgment of the Supreme Court of the District of Columbia under the Criminal Appeals Act since its enactment in 1907." The construction of statutes purely local to the District of Columbia, adverse to the contention of the United States, we submit, does not come within the meaning of the Criminal Appeals Act. In *American Security & Trust Company* v. *Commissioners of D. C.*, 224 U. S. 491 (1912), this Court held that congressional enactments having general application throughout the United States and not purely local laws of the District of Columbia are what is meant by Section 250 of the Judicial Code (36 Stat. 1087) which provided for the appellate review in this Court of judgments of the Court of Appeals, D. C., in which the construction of "any law of the United States" is drawn in question. While Section 250, Judicial Code, has been repealed by Sec. 13 of the Act of February 13, 1925 (43 Stat. 936) we submit as the words, in Section 250 "any

law of the United States" were construed to mean "laws having general application throughout the United States" and the jurisdiction then given to this Court by Section 250 was confined to what naturally and properly belongs to it, that it necessarily follows that the right of review by this Court from a judgment from any district court sustaining a demurrer based upon the "construction of the statute upon which the indictment is founded" means a statute having general application throughout the United States, such as the Corrupt Practices Act involved in the instant case.

In answer to the statement of counsel for the United States in their brief (p. 12) (following the quotation from the opinion of the Court of Appeals of the District of Columbia in *United States* v. *Denison,* 60 App. D. C. 71, 47 Fed. (2d) 433 (1931), holding that the Criminal Appeals Act of 1907 is applicable to the District of Columbia) that "There is no statement of any court which we have been able to find which even suggests that the Criminal Appeals Act has application in cases originating in the Supreme Court, or in any other Court, of the District of Columbia," we submit the following considerations:

(1) The question could not arise in any of the Circuit Courts of Appeal of the United States, excepting the Court of Appeals of the District of Columbia, and (2) the question is raised in this case, the only prior case in point being the Denison case, *supra.*

Counsel for the United States in their brief (pp. 29-30) say that if this Court shall decide that the Criminal Appeals Act applies to the District of Columbia, then all questions reviewable under the Act arising in the Supreme Court of the District of Columbia would be reviewable in this Court, whereas any ques-

tions not covered by the Act would be reviewable in the Court of Appeals of the District. Even so, this is the exact situation in every other federal district of the United States, except that the appeals are taken to the Circuit Court of Appeals for the district.

Counsel for appellees contend that Section 935 of the D. C. Code may be construed in connection with the Criminal Appeals Act of March 2, 1907, so as to give effect to each without in any way disturbing the criminal practice in the courts of the District of Columbia. (Compare *United States* v. *Sampson*, 19 App. Cas. 419 (1912); *Tri-State Motor Corp.* v. *Standard Steel Car Co.*, 51 App. D. C. 109, 276 F. 631.)

Such construction is in harmony with the letter and spirit of the Criminal Appeals Act of March 2, 1907 (a later statute than Section 935 of the D. C. Code), and with the purpose sought to be obtained by the revision of the Judicial Code by the Act of February 13, 1925. It would make the Criminal Appeals Act of uniform application throughout the United States, tend to provide for the more expeditious settlement of questions of law relating to the constitutionality or construction of Acts of Congress and of the other questions of law coming within the limited right of direct review contemplated by the Criminal Appeals Act. The construction urged by counsel for the Government on the contrary, seeks to exempt the District of Columbia from the operation of the Criminal Appeals Act of March 2, 1907, admittedly applicable to appeals from all other district courts despite that both by statute and judicial decision, the Supreme Court of the District of Columbia is a district court of the United States and of the further fact that the District Code (Sec. 21, Title 1, Code, D. C., 1929) makes all

general statutes of the United States not locally inapplicable applicable to the District of Columbia and in face of the fact that both the Criminal Appeals Act of March 2, 1907, and the revision of the Federal Judicial Code by the Act of February 13, 1925, are both later enactments designed to clarify the statute respecting appellate jurisdiction and to expedite the settlement of litigation in Federal courts.

The District of Columbia is the seat of the national government where are located the department heads and bureaus. In this jurisdiction more than any other in the United States new and novel questions involving the constitutionality and construction of Federal statutes are likely to arise. The exception sought to be made of the District of Columbia by counsel for the Government would only tend to defeat the purpose of the Criminal Appeals Act of March 2, 1907, since it would require the Government in criminal cases arising within the District and coming within its terms, to appeal first to the Court of Appeals of the District of Columbia and then if dissatisfied with the decision, to seek a *certiorari* to this court. Such a construction would seriously burden defendants who are entitled to a prompt disposition of prosecutions instituted against them. It would also operate to the great disadvantage of the Government.

Consideration should also be given to the illogical situation which would also result in the District of Columbia under some circumstances if the Government's construction were adopted. Sec. 345, Title 28, U. S. C., provides for a direct appeal by the government in five specified classes of cases, one class being involved in the instant case, coming under the Criminal Appeals Act. The others relate to the Act to

expedite the hearing and determination of certain suits brought by the United States under the Anti-Trust or Interstate Commerce Laws, etc., others to the review of interlocutory and final judgments and decrees in suits to enforce, suspend or set aside orders of the Interstate Commerce Commission or under Sec. 316 of the Packers' and Stockyards Act of 1921, to regulate foreign commerce in live stock, etc.

Some of these acts provide for their enforcement by both civil and criminal procedure. Under them (by Sec. 345, Title 28, U. S. C.) if the appeal is from a judgment or order arising in a civil proceeding, it must go direct to this court. See *United States* v. *Colgate & Co., supra*, and *United States* v. *A. Schrader's Son, Inc.*, 252 U. S. 85. If, however, an indictment is returned in a criminal proceeding under such acts in the District of Columbia and the government's contention in this case is sound, *viz.*, that the Criminal Appeals Act of March 2, 1907, has no application to the District of Columbia, then the Criminal appeal, although involving both constitutionality and construction of the statute upon which the indictment was founded would have to be appealed to the Court of Appeals of the District of Columbia instead of to this court for a final and expeditious determination of the law questions involved. In other words, if constitutionality or construction arose in a civil proceeding under such statutes in the District of Columbia, appeal would be directly to this court, but if the same question arose in a criminal prosecution under such statutes the appeal of the government would lie to the Court of Appeals of the District of Columbia. This clearly illustrates the inconsistent and unsatisfactory situation which grows out of the attempt by counsel for

the government to make the Supreme Court of the District of Columbia an exception to the general rule governing criminal appeals in the district courts of the United States.

It is respectfully submitted that the construction urged by counsel for the government would tend to confusion, result in delay and embarrassment in the administration and enforcement of the law, and instead of promoting symmetry of procedure within the District of Columbia which it claims to be desirable, would tend rather to destroy it.

CONCLUSION

We respectfully submit that the questions certified should be either dismissed or answered in the negative, for the reasons stated hereinabove.

Respectfully submitted,

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